IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12557 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NITINKUMAR RANJITLAL PATAGIYA

Appearance:

GOVERNMENT PLEADER for Petitioner

MR TH SOMPURA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/12/2000

ORAL JUDGEMENT

#. Rule. Mr.Sompura waives service of rule on behalf of the respondent.

#. By consent of the parties, the matter is taken up for

final hearing today.

#. By the impugned award, the reference of the respondent-workman was partly allowed and he was ordered to be taken back in service with 25% backwages. The respondent - workman had raised industrial dispute which was registered as Reference (LCS) No.620/89 before the Labour Court, Surat. It is the case of the concerned workman that, he was suffering from Malaria and Typhoid etc. and therefore he could not remain present on duty from 21.1.1986 and that after he felt proper, he resumed his duties, but he was not taken back in service, and, therefore, for the purpose of getting reinstatement, the aforesaid dispute was raised. On behalf of the present petitioner, reply was filed at Exh.10. It was stated that he was taken back as daily rated wager and he has not produced the certificate regarding sickness. It was also stated that the fact that the concerned workman was sick from 21.1.1986 to September 1988 was not correct and he himself has not joined the duty, and therefore, it was requested that his case is required to be dismissed. The Labour Court after considering the documentary evidence in the nature of certificate of Dr.A.K.Gheewala at Exh.19 and considering his oral evidence came to the conclusion that because of sickness, concerned workman - respondent could not resumed the duty. It was found that the concerned workman has served for more than 240 days and considering the evidence on record, ultimately, reference was partly allowed and the concerned workman was ordered to be reinstated in service with 25% backwages.

#. So far as the question of reinstatement is concerned, since the Labour Court after considering the evidence on record found that the workman has served for 240 days and the medical certificate produced was found to be genuine, I cannot reappreciate the evidence on record and therefore, so far as the reinstatement is concerned, the same is not required to be interfered with in the present petition. However, considering the facts and circumstances of the case, the order of 25% backwages should not have been passed as there was no justification in granting 25% backwages. Mr.Sompura, learned advocate for the respondent-workman states that the respondent is willing to forgo part of 25% of backwages. On the other-hand Mr.Sheth states that the court may modify the order granting 25% backwages from 25% to 5%.

#. In view of the aforesaid consensus between the parties, while confirming the order of reinstatement, the order of backwages is modified from 25% to 5%. The amount of 5% backwages to be given to the concerned

workman - respondent from the date of the reference, that is, 12.11.1989. The award of the Labour Court is accordingly modified to the aforesaid extent. The respondent - workman may be reinstated in service latest by 31.1.2001. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)